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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,296	02/15/2005	Mayumi Uno	10873.1606USWO	6008

7590 06/17/2009

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EXAMINER	
VERDERAME, ANNA L	
ART UNIT	PAPER NUMBER
1795	
MAIL DATE	DELIVERY MODE
06/17/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/525,296	UNO ET AL.	
	Examiner	Art Unit	
	ANNA L. VERDERAME	1795	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,3-7 and 10-17*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Mark F. Huff/
Supervisory Patent Examiner, Art Unit 1795

/Anna L Verderame/
Examiner, Art Unit 1795

Continuation of 11. does NOT place the application in condition for allowance because: In example 3 Kitaura et al. discloses a medium similar to applicant's medium 0 where all the recording layers have the same composition. The composition used in Kitaura et al. is $Te_{42}O_{53}Pd_5$. Unlike for applicant's medium 0 the disc in example 3 has good optical charachteristics and acheives a high C/N ratio for each of the four recording layers. See section (0105) of Kitaura et al. Kitaura et al. has the same assignee as the instant application. The Kitaura et al. further discloses manipulating the recording layer compositions and discloses the effects observed when each component of the recording layer is adjusted. This is disclosed in sections (0040-0042) of Kitaura et al. The amounts of each component in the compositions taught Kitaura et al. Nishiuchi and applicant all fall within the ranges disclosed in Kitaura. Therefore Kitaura et al. discloses adjusting the amount of oxygen and Pd in the film and discloses the results that can be expected from doing so. The extinction coefficient and the refractive index of the resulting films will be an inherent property of the films formed(ephasis added).

Nishiuchi et al. discloses a Te-O-Pd composition that is diferent from that disclosed by Kitaura et al. However, the compositon of Nishiuchi et al. falls witin the ranges disclosed for Te, O and Pd disclosed by Kitaura et al. Table 3 of Nishiuchi et al. discloses transmittance for the crystalline and amorphous phase for films having a composition of $Te_{42}O_{46}Pd_{12}$, which is in the range dislosed in Kitaura et al. Examiner notes that the claims as written do not require that the transmittance of the films i adjusted by changing the thicknesses of the film and that transmittance can be adjusted in different ways such as adjusting the metal content of the film. Nishiuchi et al. also discloses adjusting the oxygen content and the effects of such adjustments in the experimental section.

The compositions in the examples taught in applicant's specification are different than those in the example of Kitaura et al. and different than that disclosed by Nishiuchi et al. In applicant's specification the media where all of the layers have the same composition performs poorly. However, in Kitaura et al. an almost identical medium ,where the composition of the reocrding layers is the same and the thicknesses are like those taught by applicant, performs well. Kitaura et al. and the instant application have the same assignee. It would help prosecution if applicant can show a one-to-one comparison between a medium like that taught by Kitaura et al., having the same recording layer compositions and thicknesses, and a medium where the oxygen content has been adjusted so that the oxygen in the closer recording layer is lower than that in further layers. The C/N ratios of each layer should be measured for this medium as well.